

**U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:18-cv-00929-BAH**

FIRST LOOK MEDIA WORKS, INC. v. ENVIRONMENTAL
PROTECTION AGENCY

Assigned to: Chief Judge Beryl A. Howell
Cause: 05:552 Freedom of Information Act

Date Filed: 04/20/2018

Jury Demand: None

Nature of Suit: 895 Freedom of
Information Act

Jurisdiction: U.S. Government Defendant

Plaintiff

FIRST LOOK MEDIA WORKS, INC.

represented by **Matthew E. Kelley**
BALLARD SPAHR LLP
1909 K Street, NW
12th Floor
Washington, DC 20006
(202) 508-1112
Fax: (202) 661-2299
Email: kelleym@ballardspahr.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jay Ward Brown
BALLARD SPAHR LLP
1909 K Street, NW
12th Floor
Washington, DC 20006
(202) 508-1136
Fax: (202) 661-2299
Email: brownjay@ballardspahr.com
ATTORNEY TO BE NOTICED

V.

Defendant

**ENVIRONMENTAL PROTECTION
AGENCY**

represented by **Jeremy S. Simon**
U.S. ATTORNEY'S OFFICE FOR THE
DISTRICT OF COLUMBIA
555 Fourth Street, NW
Washington, DC 20530
(202) 252-2528
Fax: (202) 252-2599
Email: jeremy.simon@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/20/2018	<u>1</u>	COMPLAINT against ENVIRONMENTAL PROTECTION AGENCY (Filing fee \$ 400 receipt number 0090-5433626) filed by FIRST LOOK MEDIA WORKS, INC.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit B-1, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Summons, # <u>9</u> Summons, # <u>10</u> Summons, # <u>11</u> Civil Cover Sheet)(Brown, Jay) (Entered: 04/20/2018)
04/20/2018	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by FIRST LOOK MEDIA WORKS, INC. (Brown, Jay) (Entered: 04/20/2018)
04/20/2018	<u>3</u>	NOTICE of Appearance by Matthew E. Kelley on behalf of FIRST LOOK MEDIA WORKS, INC. (Kelley, Matthew) (Entered: 04/20/2018)

04/20/2018		Case Assigned to Chief Judge Beryl A. Howell. (zsb) (Entered: 04/20/2018)
04/20/2018	<u>4</u>	SUMMONS (3) Issued Electronically as to ENVIRONMENTAL PROTECTION AGENCY, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Notice and Consent)(zsb) (Entered: 04/20/2018)
04/24/2018	<u>5</u>	STANDING ORDER. Signed by Chief Judge Beryl A. Howell on April 24, 2018. (lcbah1) (Entered: 04/24/2018)
05/09/2018	<u>6</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 4/30/2018. Answer due for ALL FEDERAL DEFENDANTS by 5/30/2018. (Kelley, Matthew) (Entered: 05/09/2018)
05/09/2018	<u>7</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 04/30/2018. (Kelley, Matthew) (Entered: 05/09/2018)
05/09/2018	<u>8</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. ENVIRONMENTAL PROTECTION AGENCY served on 5/1/2018 (Kelley, Matthew) (Entered: 05/09/2018)
05/23/2018	<u>9</u>	Consent MOTION for Extension of Time to <i>Answer or Otherwise Respond to Complaint</i> by ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) (Entered: 05/23/2018)
05/23/2018		MINUTE ORDER (paperless) GRANTING the defendant's <u>9</u> Consent Motion for Extension of Time to Answer or Otherwise Respond to Complaint. By June 27, 2018, the defendant shall answer or otherwise respond to the plaintiff's <u>1</u> complaint. Signed by Chief Judge Beryl A. Howell on May 23, 2018. (lcbah1) (Entered: 05/23/2018)
05/23/2018		Set/Reset Deadlines: Defendant's answer or response to Complaint due by 6/27/2018. (hmc) (Entered: 05/23/2018)
06/27/2018	<u>10</u>	ANSWER to Complaint by ENVIRONMENTAL PROTECTION AGENCY.(Simon, Jeremy) (Entered: 06/27/2018)
07/11/2018	<u>11</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Simon, Jeremy) (Entered: 07/11/2018)
08/15/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>11</u> Joint Status Report, the parties to file, by August 29, 2018, an additional Joint Status Report informing the Court of their progress in producing responsive documents, narrowing areas of disagreement, and proposing any briefing schedule to resolve remaining areas of dispute. Signed by Chief Judge Beryl A. Howell on August 15, 2018. (lcbah1) (Entered: 08/15/2018)
08/15/2018		Set/Reset Deadlines: Joint Status Report due by 8/29/2018. (tg) (Entered: 08/15/2018)
08/29/2018	<u>12</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Simon, Jeremy) (Entered: 08/29/2018)
08/29/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>12</u> Joint Status Report, the parties to file an additional Joint Status Report by November 7, 2018, informing the Court of their progress in resolving areas of dispute, unless a stipulation of dismissal has been filed prior to that date. Signed by Chief Judge Beryl A. Howell on August 29, 2018. (lcbah1) (Entered: 08/29/2018)
08/29/2018		Set/Reset Deadlines: A further Joint Status Report is due by 11/7/2018. (hmc) (Entered: 08/29/2018)
11/07/2018	<u>13</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Simon, Jeremy) (Entered: 11/07/2018)
11/08/2018		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>13</u> Joint Status Report, the parties to file, by December 10, 2018, a joint status report that shall address in more detail why production of more than 500 records per month is infeasible given the availability of electronic search tools, such as keyword searches, and whether agreement on relevant keywords would facilitate the defendant's production of documents responsive to the plaintiff's seven FOIA requests at a rate of

		2,500 records per month, as requested by the plaintiff. Signed by Chief Judge Beryl A. Howell on November 8, 2018. (lcbah1) (Entered: 11/08/2018)
11/08/2018		Set/Reset Deadlines: Joint Status Report due by 12/10/2018. (tg) (Entered: 11/08/2018)
12/10/2018	<u>14</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Declaration of Brian Hope)(Simon, Jeremy) (Entered: 12/10/2018)
12/12/2018		<p>MINUTE ORDER (paperless) DIRECTING, in light of the parties' <u>14</u> Joint Status Report, which reveals that the parties hold widely divergent positions regarding a viable production schedule for the 20,055 potentially responsive records, with the defendant seeking to produce 500 records per month over the next three years, and the plaintiff seeking the production of 2,500 records per month over the next eight months, that the defendant submit by December 20, 2018 responses to the following issues raised by information set out in the Declaration of Brian Hope ("Hope Decl."):</p> <p>(1) the effect of the "AO4 project," which in December 2017 consolidated FOIA processing of four offices into a single operation, <i>see</i> Hope Decl. &#182 14, on the defendant's production capacity and whether the AO4 project has slowed or accelerated the defendant's production capacity for responsive records in the Office of the Administrator;</p> <p>(2) given that the "temporary team of 12 staff & dedicated to first-line review of records" is focused on only "FOIA requests not in litigation," <i>see</i> Hope Decl. &#182 15, how much the defendant's proposed production rate of 500 records per month could be increased by allocating more staff to FOIA requests in litigation and whether such allocation could bring this case to a prompt resolution;</p> <p>(3) given that only "four of the total six staff," who are "dedicated to working on FOIA matters assigned to the Office of the Administrator," are authorized "to spend a portion of their time on FOIA requests that are in litigation," <i>see</i> Hope Decl. &#182 16, how much the defendant's proposed production rate of 500 records per month could be increased were these four staffers allowed to spend all their time on FOIA requests in litigation;</p> <p>(4) given the defendant's plan to "cap" at "50 percent of their time" the time the four staff members referenced in (3), above, are authorized to spend on FOIA requests in litigation, <i>see</i> Hope Decl. &#182 17, how much the defendant estimates this plan slows the production rate of responsive records and impedes prompt resolution of FOIA litigation;</p> <p>(5) given that the four staff members referenced in (3), above, "support a maximum total of 256 hours per month to process records for FOIA requests in litigation," <i>see</i> Hope Decl. &#182 19, what the total number of hours per month for such processing would be if all six staff members dedicated to working on FOIA matters, plus the 12 staff members referenced in (2) above, were authorized to work on FOIA matters in litigation, and how quickly the production of 20,055 potentially responsive records in this case could be accomplished to bring this case to a prompt resolution;</p> <p>(6) given that the "awareness notification process is not an approval process," <i>see</i> Hope Decl. &#182 28, how long does this process delay release of responsive records, and how does this process effect the defendant's production rate; and</p> <p>(7) given that the defendant's estimate of the "average rate of review," is based on "review projects of varying degrees of complexity," <i>see</i> Hope Decl. &#182 30, explain how the defendant evaluates the complexity of the FOIA requests at issue in this litigation, which, for example, seek such records as "the Administrators use of first class or business class expenses for the Italy trip and other meetings," and "records in the possession of Ryan Jackson pertaining to Scott Pruitt's actual or proposed use of first class or business class travel," <i>see</i> Hope Decl. &#182&#182 6Y, and whether non-complex requests at issue here should be reviewed and processed more quickly than the average rate of review to bring this case to a prompt resolution. Signed by Chief Judge Beryl A. Howell on December 12, 2018. (lcbah1) (Entered: 12/12/2018)</p>

12/12/2018		Set/Reset Deadlines: Defendant's responses pursuant to Order of the Court due by 12/20/2018. (tg) (Entered: 12/12/2018)
12/14/2018	<u>15</u>	MOTION for Extension of Time to <i>Respond to Court's Order of December 12, 2018</i> by ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) (Entered: 12/14/2018)
12/14/2018		MINUTE ORDER (paperless) GRANTING the defendant's <u>15</u> Motion for Extension of Time to Respond to Court Order and DIRECTING the defendant, by January 10, 2019, to respond to the Court's December 12, 2018 Order. Signed by Chief Judge Beryl A. Howell on December 14, 2018. (lcbah1) (Entered: 12/14/2018)
12/14/2018		Set/Reset Deadlines: Defendant's Response to Court's Order of December 12, 2018, due by 1/10/2019. (tg) (Entered: 12/14/2018)
01/08/2019	<u>16</u>	MOTION to Stay <i>in Light of Lapse in Appropriations</i> by ENVIRONMENTAL PROTECTION AGENCY (Simon, Jeremy) (Entered: 01/08/2019)
01/09/2019		MINUTE ORDER (paperless) STAYING, upon consideration of the <u>16</u> Defendant's Motion to Stay Proceedings in Light of Lapse of Appropriations, the deadline for the defendant to respond to the Court's December 12, 2018 minute order and ORDERING the parties to file, within two business days of Congress appropriating funds for the defendant, a joint status report proposing a new deadline for the defendant's response. Signed by Chief Judge Beryl A. Howell on January 9, 2019. (lcbah1) (Entered: 01/09/2019)
01/29/2019	<u>17</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Simon, Jeremy) (Entered: 01/29/2019)
01/29/2019		MINUTE ORDER (paperless) DIRECTING, upon consideration of the parties' <u>17</u> Joint Status Report, the parties to submit, by February 15, 2019, a joint status report responding to the Court's December 12, 2018 minute order. Signed by Chief Judge Beryl A. Howell on January 29, 2019. (lcbah1) (Entered: 01/29/2019)
01/30/2019		Set/Reset Deadlines: Joint Status Report due by 2/15/2019. (tg) (Entered: 01/30/2019)
02/15/2019	<u>18</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Attachments: # <u>1</u> Declaration of Brian Hope)(Simon, Jeremy) (Entered: 02/15/2019)
02/15/2019		MINUTE ORDER (paperless) DIRECTING the plaintiff to respond, by February 22, 2019, to the defendant's <u>18</u> Status Report. Signed by Chief Judge Beryl A. Howell on February 15, 2019. (lcbah1) (Entered: 02/15/2019)
02/19/2019		Set/Reset Deadlines: Response to <u>18</u> Status Report due by 2/22/2019. (tg) (Entered: 02/19/2019)
02/22/2019	<u>19</u>	RESPONSE re <u>18</u> Status Report filed by FIRST LOOK MEDIA WORKS, INC.. (Kelley, Matthew) (Entered: 02/22/2019)
02/25/2019		MINUTE ORDER (paperless) ISSUING, upon consideration of the <u>13</u> Joint Status Report, <u>14</u> Joint Status Report, <u>18</u> Joint Status Report, and the <u>19</u> Plaintiff's Response to Status Report, the following SCHEDULING ORDER: (1) by March 27, 2019, and every 30 days thereafter until the production of responsive records is complete, the defendant shall release to the plaintiff no fewer than 750 responsive records; (2) by April 26, 2019, and every 60 days thereafter until the production of responsive records is complete, the parties shall file a joint status report advising the Court on the status of the defendant's production, including the number of records produced, in full or in part or withheld, and remaining for processing, and the estimated date for completion of such processing. Although the defendant objects to production of more than 500 records per month as infeasible, <i>see</i> <u>14</u> Joint Status Report at 3, production of 750 records per month is consistent with the defendant's commitments in other litigation, <i>see</i> Decl. of Brian Hope ¶ 15, ECF No. 18-1, and is a significant departure from the plaintiff's initial request that the defendant release 2,500 records per month. Furthermore, the defendant's requested limit of 500 records per month and assessment of its own production capacity reflects the defendant's choices about allocating resources, including between FOIA requests not yet in litigation and those already in litigation. <i>See id.</i> ¶¶ 5, 11, 14. Clearing the backlog of 1,500 FOIA requests that accrued due to the increase in FOIA requests during the tenure of former

		Administrator Scott Pruitt, <i>see id.</i> ¶¶ 4 , cannot come at the expense of reasonably expeditious resolution of FOIA requests already in litigation. Production of 750 records per month serves that objective. Signed by Chief Judge Beryl A. Howell on February 25, 2019. (lcbah1) (Entered: 02/25/2019)
02/26/2019		Set/Reset Deadlines: Release of responsive records due by 3/27/2019, and every 30 days thereafter until the production of responsive records is complete. Joint Status Report due by 4/26/2019, and every 60 days thereafter until the production of responsive records is complete. (tg) (Entered: 02/26/2019)
03/07/2019	<u>20</u>	Joint MOTION to Stay <i>Production and Status Report Schedule Set Forth in the February 25, 2019 Order</i> by ENVIRONMENTAL PROTECTION AGENCY (Attachments: # <u>1</u> Proposed Order)(Simon, Jeremy) (Entered: 03/07/2019)
03/07/2019		MINUTE ORDER (paperless) GRANTING the parties' <u>20</u> Joint Motion to Stay Production and Status Report Schedule Set Forth in the February 25, 2019 Minute Order; STAYING this Court's February 25, 2019 Minute Order; and DIRECTING the parties to file a joint status report by April 8, 2019. Signed by Chief Judge Beryl A. Howell on March 7, 2019. (lcbah1) (Entered: 03/07/2019)
03/07/2019		Set/Reset Deadlines: Joint Status Report due by 4/8/2019. (tg) (Entered: 03/07/2019)
04/08/2019	<u>21</u>	Joint STATUS REPORT by ENVIRONMENTAL PROTECTION AGENCY. (Simon, Jeremy) (Entered: 04/08/2019)
04/09/2019		MINUTE ORDER (paperless) EXTENDING, upon consideration of the parties' <u>21</u> Joint Status Report, this Court's stay until April 30, 2019 and DIRECTING the parties to file a joint status report by April 30, 2019 indicating if the parties have agreed to narrow the scope of their dispute and describing the parties' agreement, if any, and, if no agreement has been reached, resuming production consistent with this Court's February 25, 2019 Minute Order. Signed by Chief Judge Beryl A. Howell on April 9, 2019. (lcbah1) (Entered: 04/09/2019)
04/09/2019		Set/Reset Deadlines: Joint Status Report due by 4/30/2019. (tg) (Entered: 04/09/2019)